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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,643	07/01/2003	Aharon Laufer	557-1001	3697

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EXAMINER	
CUMARASEGARAN, VERN	
ART UNIT	PAPER NUMBER
3629	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/612,643	LAUFER, AHARON	
	Examiner	Art Unit	
	VERN CUMARASEGARAN	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 July 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to what activities do the terms "*operating*" and "*attempting to sell*" encompass. One of ordinary skill in the art is not reasonably apprised of the specific activities to avoid in order to avoid infringement of these claims. The claims are interpreted as best understood by the examiner.

Claims 1, 24, 25 and 26 refer to "*hotel/limited timeshare facility.*" It is unclear whether the term is referring to a facility that has both a hotel and limited timeshares or only one of a hotel or limited timeshares. Moreover, the term "*limited*" is vague in that no information is given as to what the limitations are. Examiner interprets the language as an area comprising of one or more buildings that includes a hotel and a timeshare unit.

Fig.1 no.103, claim 1 and claim 25 recite *"yearly sales and marketing expenses related to sales attempts for non-peak period timeshares of similar duration and quality as the peak period timeshares being less than the yearly peak period expenses."* It is unclear whether this portion is part of the "*attempting to sell*" step or a separate method step. The examiner interprets the phrase as a separate method step.

Claim 26 refers to "*yearly sales and marketing expenses related to sales*

attempts for non-peak period timeshares being defined as yearly non-peak period expenses." Examiner interprets the phrase as being part of the attempting sell step since it continues with the definition of yearly peak and non-peak period expenses.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (Brown, Carolyn Spencer: "Time shares get class. Yes, time shares.; Big name hotels, more options are reinventing the industry," Washington Post, pg. E01 [Final Ed], April 29, 2001 (hereinafter "Brown")).

As to claims 1 and 25, Brown shows operating the hotel/limited timeshare facility as a combined hotel/timeshare facility (paragraph 12 "...you can buy a time share that's part of your favorite hotel chain. Prefer Disney, Marriott, Westin, Ramada....Hyatt? They've all embraced the concept, with most of their timeshare operations located next to existing hotel properties.");

attempting to sell a set of peak period timeshares for intervals (where Brown shows a buyer buying "*...a week in February (high season) at the St.John Westin...*" In order for the buyer to buy the timeshare, a seller must have been attempting to sell a

set (where the word "*set*" can range from zero to one-hundred percent of the available units) of the peak period ("*high season*") timeshares).

The element "*yearly sales and marketing expenses related to sales attempts for non-peak period timeshares of similar duration and quality as the peak period timeshares being less than the yearly peak period expenses*" is not considered a proper method step. As such, this element of the claim is not given patentable weight (see 703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983)).

However, the examiner takes official notice that it is old and well known in the art to perform a market analysis of a product or service before implementing a marketing plan. It would have been determined through such analysis, that demand for peak period timeshares would be higher than that for non-peak period timeshares, and as such, marketing expenses for peak period timeshares would be lower compared to non-peak period timeshares. Combing this finding with the fact that there is only a limited supply of peak period timeshares for a facility, a higher price can be charged for peak period timeshares than for non-peak period timeshares. One of ordinary skill in the art would focus the marketing efforts on the product or service where a higher return on marketing investment can be realized. For example, a real estate broker would focus his advertising budget on a luxury home than on a one bedroom condominium since the sale of the luxury home would result in a higher profit relative to the advertising expenses. Therefore, it would have been obvious to one of ordinary skill in the art to **focus the marketing efforts on peak period timeshares since the return on investment on peak period timeshares would be much higher than for non-peak**

period time shares.

As to claim 2, it would have been obvious to one of ordinary skill in the art to define a peak period demand as when anticipated occupancy rates exceed a certain percentage since it is old and well known in the art to define peak period demand as when anticipated occupancy rates exceed a certain percentage.

As claims 3-5, Brown does not expressly show specific percentage rates. However, the specific percentage rate does not functionally affect the generic method for operating a combined hotel/limited timeshare facility. Consequently said specific percentage rate qualifies as nonfunctional descriptive material and is not given patentable weight.

As to claim 6, it is old and well known in the art to calculate the certain percentage by multiplying a certain multiple greater than one by the average occupancy rate for the facility. It would have been obvious to one of ordinary skill in the art to incorporate the feature of calculating the percentage in such a manner into Brown's method, since doing so would have been a mere combination of old elements.

As to claim 7, it is old and well known in the art to calculate anticipated occupancy rates using historical data. It would have been obvious to one of ordinary skill in the art to incorporate the feature of calculating anticipated occupancy rates using historical data into Brown's method since doing so would have been a mere combination of old elements.

As to claim 8, it is old and well known in the art to have an area where it is home to a plurality of regularly recurring events and wherein the intervals for the set of peak

period timeshares correspond to the regularly recurring events (areas suitable for skiing would have a peak period in winter). It would have been obvious to one of ordinary skill in the art to incorporate the feature of peak period being regularly recurring events, since doing so would have been a mere combination of old elements.

As to claim 9, it is old and well known in the art that sporting events such as Super Bowl are regularly recurring events. It would have been obvious to one of ordinary skill in the art to incorporate the feature of sporting events since doing so would have been a mere combination of old elements.

As to claims 10 - 13, it is old and well known in the art to identify a target group of regular attendees of sporting events and attempting to sell only to the target group. Selling season tickets for a university football games is one such example. It would have been obvious to one of ordinary skill in the art to incorporate the feature of identifying target group of regular attendees since doing so would have been a mere combination of old elements.

As to claims 14, 15, 18 and 19, intervals having duration of not greater than three days and non-contiguous interval peak period timeshares are considered design choice since no new or unexpected result or advantage is produced by the limitation. Thus they are not given patentable weight.

As to claim 16, it is old and well known in the art to have marketing expenses related to non-peak period timeshare sales being zero when no effort is made to sell the non-peak period timeshares.

As to claim 17, it is old and well known in the art to pre-sell properties. It would

have been obvious to one of ordinary skill in the art to incorporate the pre-selling feature since doing so would have been a mere combination of old elements.

As to claim 20, Brown shows peak period timeshares being associated with a single unit of a facility.

As to claim 21, Brown shows the single unit being in a hotel.

As to claim 22, Brown shows peak period timeshares sold as equity in an entity owning the facility.

As to claim 23, Brown shows the facility being a building.

Claims 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley (Cara Buckley: "Fort Lauderdale, Fla., Approves Plans for Hotel, Retail, Timeshare Project" Knight Ridder Tribune Business News, March 6, 2002, pg. 01 (hereinafter "Buckley")).

As to claim 24, Buckley shows operating the hotel/limited timeshare facility as a combined hotel/timeshare facility during the year

{"*...site plans for...hotel, timeshare and retail complex...*"};

attempting to sell a set of peak period timeshares for intervals corresponding to at least some of the peak demand periods

{"*...operators can sell units right away...*" where since the word "*set*" can range from zero to one-hundred percent of the available units, selling of units will be under the scope of selling a set of peak period timeshares}

wherein a first ratio of sales and marketing expenses to revenues related to sales attempts for non-peak period timeshares is less than a second ratio of sales and

marketing expenses to revenues related to the sales attempts for the set of peak period timeshares

{examiner takes official notice that it is old and well known in the art that when selling peak period timeshares, revenues will be higher and marketing expenses will be lower compared to selling of non-peak timeshares. Therefore, the ratio of expenses to revenue for peak period timeshares will naturally be lower than for non-peak period timeshares. Thus, the recited clause merely states the intended result of the previous two method steps, and as such is not given patentable weight (see Minton v. Nat'l Ass'n of Securities Dealers, Inc., 336 F.3d 1373, 1381, 67 USPQ2d 1614, 1620 (Fed. Cir. 2003)).

As to claim 26, Buckley shows operating the hotel/limited timeshare facility as a combined hotel/timeshare facility during the year

{"*...site plans for...hotel, timeshare and retail complex...*"};

attempting to sell a set of peak period timeshares for intervals corresponding to at least some of the peak demand periods, yearly sales and marketing expenses related to the sales attempts for the set of peak period timeshares being defined as yearly peak period expenses, yearly sales and marketing expenses related to sales attempts for non-peak period timeshares being defined as yearly non-peak period expenses

{"*...operators can sell units right away...*" where since the word "*set*" can range from zero to one-hundred percent of the available units, selling of units will be under the scope of selling a set of peak period timeshares}

wherein a first average of the yearly non-peak period expenses per non-peak

period timeshare sold is less than a second average of the yearly peak period expenses per peak period timeshare sold

{when a sales effort is focused on peak period timeshares with little or no effort made to sell non-peak period timeshares, the peak period expenses would naturally be higher than for non-peak period expenses. Therefore, the average of yearly non-peak period expenses per non-peak period timeshare sold would be less than a the average of the yearly peak period expenses per peak period timeshare sold. Thus, the recited clause merely states the intended result of the previous two method steps, and as such is not given patentable weight.}

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Albright, Mark – Shows combined condominium and hotel facilities

Dorkin – Shows pre-construction sales of timeshare units

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERN CUMARASEGARAN whose telephone number is (571)270-3273. The examiner can normally be reached on Monday - Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Vc

/John G. Weiss/
Supervisory Patent Examiner, Art Unit 3629